

# STARK, SCHAKOWSKY QUESTION ETHICS OF WAIVER PROVIDED TO MEDICARE ADMINISTRATOR SCULLY

Thursday, 11 December 2003

Today, Rep. Pete Stark (D-CA), Ranking Democrat of the Ways & Means Health Subcommittee and Rep. Jan Schakowsky (D-IL), Ranking Democrat of the Energy & Commerce Subcommittee on Commerce, Trade and Consumer Protection, issued the following letter to HHS Secretary Tommy Thompson questioning the ethics waiver provided to CMS Administrator Tom Scully:

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

The Honorable Tommy G. Thompson

Secretary

Department of Health and Human Services

200 Independence Avenue, SW

Washington, DC 20201

Dear Secretary Thompson:

Like many others, we were concerned to learn that CMS Administrator Tom Scully had received a waiver from the Ethics Office of the Department of Health and Human Services to pursue employment in the health care industry while he continued to serve as the Administrator of the Centers for Medicare and Medicaid Services. The timing of the waiver is of particular concern because it was granted during a time when Mr. Scully was intimately involved in the negotiation and drafting of the broadest overhaul of Medicare since the program's inception.

We recently received a copy of the waiver granted to Mr. Scully (attached) and are absolutely shocked that it could pass muster.

First

is the issue of timing. This waiver was granted on May 12, 2003. That means Mr. Scully has clearly been talking to prospective employers in the health field since before the House or Senate passed their independent versions of Medicare legislation and has carried his negotiations through the entire legislative process, including the bill signing ceremony.

For seven months, Members of Congress who relied on Mr. Scully for information were kept in the dark about the fact that he was actively engaged in looking for employment with firms that have significant interests in the issues at stake. Financial conflicts of interest rules are designed to assure Members of Congress, entities with interests pending before CMS, and the public that federal executive branch employees are independent and unbiased in their behavior. While we strongly believe that this waiver should never have been granted, at a bare minimum knowledge of it would have been valuable to us in weighing the advice provided by Mr. Scully.

More disturbing is the construction of the waiver. The idea that the only real conflict with a prospective employer would be one which would have "a special or distinct effect on the firms with which he is negotiating for employment" is frankly absurd.

As CMS Administrator, Mr. Scully has direct influence over regulations issued by CMS, policies enforced by the agency, and legislative pursuits by the agency as well. These actions typically do not have a "special" effect on a law firm representing a wide array of health care clients. Its effect on those clients might be very direct, but it affects clients at a myriad of other law firms as well. Therefore, this waiver granted him essentially free rein to negotiate with firms with whom his decisions as CMS Administrator directly (and substantially) impacted.

We think the real reason for this waiver is stated in the text of the waiver itself: "It is neither practicable, nor in the interest of the Department, for Mr. Scully to remain disqualified from such a large number of important and broadly applicable matters while he is seeking future employment."

Mr. Secretary, with all due respect, the very reason that laws exist to prevent financial conflicts of interest are because they are vitally necessary to protect the integrity of government work. It is not intended that high-ranking government officials be actively trolling for work in the very industry they are being entrusted to regulate and oversee on behalf of the public.

At best, this waiver is unseemly. At worst, it may well have lead to enactment into law of provisions to benefit particular special interests rather than the public good. We urge that your Department learn from this experience and never grant a waiver like this again. In the meantime, we would appreciate being informed of any similar waivers that have been provided to currently-employed officials at the Department of Health and Human Services.

Sincerely,

Pete Stark

Ranking Democrat

Committee on Ways and Means

Subcommittee on Health

Jan Schakowsky

Ranking Democrat

Committee on Energy and Commerce

Subcommittee on Commerce, Trade and Consumer Protection